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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

THE ALASKA LANDMINE LLC, )  
And JEFFREY LANDFIELD, )  
Plaintiffs, )  
Case No. 3:20-cv-00311-JMK

MICHAEL J. DUNLEAVY, in his, )  
official capacity as Governor of the State )  
of Alaska; BEN STEVENS, in his )  
official capacity as Chief of Staff to the )  
Governor of the State of Alaska; and )  
JEFF TURNER, in his official capacity )  
as Deputy Communications Director )  
for the Office of the Governor of the )  
State of Alaska )

Defendants. )

**MEMORANDUM IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

## I. INTRODUCTION

25 This case is about protecting the freedom of the press to cover the Governor of  
26 Alaska. Specifically, it is about ensuring the Governor of Alaska does not get to select

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1 which journalists cover his press conferences and bar journalists for arbitrary reasons.

2       The free speech and due process clauses of the U.S. Constitution and Alaska  
3 Constitution prohibit the Governor from excluding credentialed members of the Alaska  
4 press from his press conferences without providing a compelling reason for doing so.  
5 In contravention of these basic free speech and due process principles, Defendants  
6 have refused to allow Plaintiff Jeffrey Landfield (“Landfield”) the same access to  
7 gubernatorial press events as the other credentialed members of the press. This lawsuit  
8 seeks to remedy the Defendants’ unconstitutional behavior.

9       Governor Dunleavy and his office have not always excluded Landfield from  
10 gubernatorial press events. For most of 2019, the governor’s staff properly included  
11 Landfield on email notices and invitations to gubernatorial press conferences and other  
12 press events. That changed in early October 2019, when then-Press Secretary Matthew  
13 Shuckerow resigned to pursue another job. After Shuckerow’s resignation in early  
14 October 2019, Defendant Jeff Turner (“Turner”) took over the duty of notifying and  
15 inviting journalists to press events, and he stopped including Landfield on press invites.  
16 Nothing changed except who was controlling the invites. Landfield remains a  
17 credentialed member of the press and has not engaged in any disruptive or otherwise  
18 improper behavior at gubernatorial press events.

19       When Turner began excluding Landfield from press conferences, Landfield  
20 promptly complained to Turner, the Deputy Communications Director for the  
21 governor’s office. Turner responded by apologizing for the “oversight.” Turner was  
22

1 being duplicitous. Turner never remedied the “oversight,” and continued to leave  
2 Landfield off of press notices and invites. Unable to get any explanation whatsoever  
3 from Turner, Landfield next took the matter to the governor’s Chief of Staff, Ben  
4 Stevens (“Stevens”). Stevens listened to Landfield’s concern, but ultimately refused to  
5 do anything.

7 From October 2019 through present, Landfield has attempted to work around  
8 the governor’s office’s refusal to acknowledge and treat Landfield as a credentialed  
9 member of the press. Landfield has learned about gubernatorial press events through  
10 the goodwill of other members of the press, who forward him notices and invites.  
11 Landfield then simply shows up to the events uninvited. Unfortunately, despite his  
12 efforts to work through the Dunleavy administration’s improper treatment, Defendants  
13 have made it no longer feasible for Landfield to do his job by structuring gubernatorial  
14 press briefings where only those members of the press the governor invites may  
15 participate.

18 On December 11, 2020, Governor Dunleavy held a video conference press  
19 conference to discuss his recently released proposed state budget for Fiscal Year 2022.  
20 Once again, the governor’s office did not invite Landfield to the event, but Landfield  
21 learned of it from another journalist. Landfield attended, and during the question and  
22 answer portion of the event attempted to ask Governor Dunleavy a question. Defendant  
23 Turner was managing the press conference. When Landfield attempted to ask a  
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1 question, Turner responded: "Sorry Jeff, we're going to go to closing comments. Thank  
2 you."  
3

4 Plaintiffs are seeking merely equal treatment as other members of the press.  
5 Plaintiffs are not seeking a ruling that the governor or his administration must call on  
6 Landfield at press conferences or answer his questions. Of course, the governor is free  
7 to choose which journalists he calls on at press conferences, if any, and is free to answer  
8 or not answer any questions posed by journalists. Plaintiffs are not suggesting that the  
9 governor may never reduce the number of journalists invited to an event because of  
10 space or seating limitations of the venue.<sup>1</sup> If space or seating is a bona fide issue, the  
11 governor remains free to limit press attendance based on neutral criteria. But, here,  
12 there are no space or seating concerns. Press attendance at these events has diminished  
13 over the past few years, and there are always more than enough seats and space for  
14 journalists at gubernatorial press conferences and other press events in Anchorage and  
15 in Juneau. Furthermore, Plaintiffs are not suggesting that the governor may not adopt  
16 a code of conduct or decorum for press conduct at gubernatorial press events. Again,  
17 this is not an issue, because Landfield has never caused a disruption at the many  
18 gubernatorial press conferences and other press events he has attended. Nor does he  
19 oppose such a code of conduct/decorum.  
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25 <sup>1</sup> See *Frank v. Herter*, 269 F.2d 245, 248-49 (D.C. Cir. 1959) (Burger, J., concurring)  
26 (Secretary of State may use neutral criteria to allocate press seats on his plane for a foreign  
trip).

1 Landfield and the media outlet he founded, The Alaska Landmine LLC, seek a  
2 temporary restraining order and a preliminary injunction against Defendants Governor  
3 Dunleavy, Chief of Staff Stevens, and Deputy Communications Director Turner that  
4 requires them to treat Landfield the same as every other credentialed member of the  
5 press. Plaintiffs seek an injunction that requires Defendants to invite Landfield to  
6 gubernatorial press conferences and other press events, and allow Landfield to  
7 participate to the same extent other members of the press are allowed to participate.  
8  
9 The leading case on the government's wrongful exclusion of a single journalist from  
10 executive branch press events, *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977),  
11 confirms Landfield is entitled to this equal treatment.  
12

13 **II. FACTUAL BACKGROUND**

14  
15 Defendants have reversed course over the past year and stopped treating  
16 Landfield as a credentialed member of the press. From Governor Dunleavy's  
17 inauguration through September 2019, the governor's office included Landfield and  
18 The Alaska Landmine on notices and invitations to gubernatorial press briefings and  
19 other gubernatorial press events. However, when Defendant Jeff Turner stepped into  
20 the role of interacting with the Alaska press in October 2019, this stopped completely.  
21 Turner has not included Landfield on notices or invitations to gubernatorial press  
22 events. Neither Turner nor anyone else at the governor's office has provided a reason  
23 for treating Landfield different than the other members of the credentialed press.  
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1       In October 2017, Landfield founded The Alaska Landmine as a sole  
2 proprietorship for the purpose of shining light on important events that the media had  
3 not yet covered.<sup>2</sup> Landfield was concerned with the reduction in local journalism that  
4 was occurring in Alaska, as it was across the United States.<sup>3</sup> He hoped that by reporting  
5 on these events, he could pique the interest of established media outlets to utilize their  
6 resources to get to the truth.<sup>4</sup> Landfield purchased the web domain  
7 [www.alaskalandmine.com](http://www.alaskalandmine.com) to serve as the main platform for his journalism, and also  
8 utilizes the social media platforms Twitter and Facebook to spread his articles.<sup>5</sup>  
9

10       Landfield's plan was immediately successful. Less than a month after founding  
11 The Alaska Landmine, Landfield broke the news that a state senator allegedly acted in  
12 an improper sexual manner toward a staffer who was guarding the door to a closed  
13 meeting in the Alaska Legislature.<sup>6</sup> After Landfield broke this news, the Legislative  
14 Affairs Agency instituted an investigation and the Anchorage Daily News took up  
15 reporting on the story.<sup>7</sup>  
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17       A couple of examples help illustrate Landfield's and The Alaska Landmine's  
18 ability to bring stories of public importance to light. During the fall of 2019, Landfield  
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21       <sup>2</sup> Affidavit of Jeff Landfield, ¶ 4 (Dec. 21, 2020).

22       <sup>3</sup> Aff. of J. Landfield, ¶¶ 2-3.

23       <sup>4</sup> *Id.*, ¶ 4.

24       <sup>5</sup> *Id.*, ¶¶ 4 and 8.

25       <sup>6</sup> *Id.*, ¶ 4.

26       <sup>7</sup> *Id.*

1 and another member of the Alaska Landmine (Paxson Woelber) published *The Bizarre*  
2 *Story of Campbell Lake, The Private Lake That Isn't.*<sup>8</sup> The article revealed that contrary  
3 to the prevailing opinion of the homeowners lining Campbell Lake in Anchorage that  
4 the lake was privately owned, Campbell Lake is public lands open for public use and  
5 accessible via two section-line easements that cross private tracts of land, one of which  
6 is owned by a state senator.<sup>9</sup> Following The Alaska Landmine's report, the  
7 Municipality of Anchorage and State of Alaska issued a joint statement confirming the  
8 lake was owned by the state and open to public use and the public was permitted to use  
9 the section-line easements identified by The Alaska Landmine to access the  
10 waterbody.<sup>10</sup>

11       Last March, Landfield reported via The Alaska Landmine that Bethel resident  
12 Rebecca Trimble, who, unbeknownst to her, was brought to the United States when she  
13 was only a few days old, had recently received notice from federal immigration  
14 authorities that she had 33 days to leave the country.<sup>11</sup> *The New York Times* picked up  
15 the story, and shortly after U.S. Senators Lisa Murkowski and Dan Sullivan introduced  
16 a private bill in Congress to make Trimble a lawful permanent alien resident of the  
17 United States.<sup>12</sup>

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23       <sup>8</sup>       *Id.*, ¶ 5.

24       <sup>9</sup>       *Id.*

25       <sup>10</sup>      *Id.*

26       <sup>11</sup>      *Id.*, ¶ 6.

<sup>12</sup>      *Id.*

1 Landfield and The Alaska Landmine have also published articles unfavorable to  
2 Governor Dunleavy. In May 2019, Landfield published a report that the grandson of a  
3 wealthy donor to an independent expenditure group focused on the election of Governor  
4 Dunleavy had secured a sole-source contract worth \$441,000 from the Alaska Industrial  
5 Development and Export Authority.<sup>13</sup> Almost a year later, a follow-up report  
6 uncovered that Governor Dunleavy had personally requested the contract be awarded  
7 to the grandson.<sup>14</sup> Following this reporting, the grandson opted out of the controversial  
8 contract.<sup>15</sup>

11 The Alaska Landmine has a substantial circulation and regularly publishes  
12 pieces on political, business, and cultural happenings in Alaska. The website  
13 [www.alaskalandmine.com](http://www.alaskalandmine.com) receives tens of thousands of views each week.<sup>16</sup> The  
14 Alaska Landmine's Facebook account is followed by 8,982 accounts and its Twitter  
15 account is followed by 4,626 accounts.<sup>17</sup> The Alaska Landmine "Radio" section of its  
16 website contains 184 long-form interviews/podcasts conducted by Landfield of  
17 interviewees such as U.S. Senators Lisa Murkowski and Dan Sullivan, U.S.  
18 Representative Don Young, Alaska Governors Dunleavy and Walker, Alaska Chief  
19 Medical Officer Anne Zinke, several members of the Anchorage Assembly, several  
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23 <sup>13</sup> *Id.*, ¶ 7.

24 <sup>14</sup> *Id.*

25 <sup>15</sup> *Id.*

26 <sup>16</sup> *Id.*, ¶ 8.

<sup>17</sup> *Id.*

1 members of the Alaska Legislature, and many other individuals who are part of  
2 Alaska's political and business communities.<sup>18</sup> The Alaska Landmine publishes two  
3 weekly columns, and Landfield strives to post a new article every day on top of those  
4 columns.<sup>19</sup>

6 After founding The Alaska Landmine in October 2017, Landfield covered the  
7 second session of the 30th Alaska Legislature from Anchorage by making and receiving  
8 telephone calls and emails.<sup>20</sup> In November 2018, Governor Dunleavy was elected, and  
9 in January 2019, Landfield travelled to Juneau to cover the first session of the 31st  
10 Alaska Legislature.<sup>21</sup> Landfield applied with the Alaska Legislature for press  
11 credentials, but was denied because, according to the Legislature, he had too recently  
12 managed an independent expenditure group supporting then-candidate Joshua Revak.<sup>22</sup>  
13 Instead of complaining, Landfield put his nose to the grindstone and worked around the  
14 problem as best he could by obtaining press releases and notices of press availability  
15 from other helpful journalists.<sup>23</sup>

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18 Despite not having press credentials from the Alaska Legislature during 2019,  
19 Governor Dunleavy's office included Landfield in its invitations to gubernatorial press  
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23<sup>18</sup> *Id.*  
24<sup>19</sup> *Id.*, ¶ 9.  
25<sup>20</sup> *Id.*, ¶ 9.  
26<sup>21</sup> *Id.*, ¶ 11.  
<sup>22</sup> *Id.*  
<sup>23</sup> *Id.*, ¶ 12.

1 conferences and other press events.<sup>24</sup> Governor Dunleavy's Press Secretary Matt  
2 Shuckerow invited Landfield to at least sixteen gubernatorial press events in January,  
3 February, April, May, June, July, August and September of 2019.<sup>25</sup> Landfield attended  
4 most if not all of these events, and was never accused by anyone, including anyone in  
5 the governor's office, of causing a disruption or otherwise acting improperly.<sup>26</sup>

7 In early October 2019, Shuckerow resigned to take another position, and  
8 Defendant Jeff Turner was tasked with coordinating gubernatorial press conferences  
9 and other press events.<sup>27</sup> Turner did not continue Shuckerow's practice of inviting  
10 Landfield to press events.<sup>28</sup> On December 11, 2019, Landfield emailed Turner and  
11 asked "Is there a reason I didn't get the email about the budget meeting today? I thought  
12 I was on the press list."<sup>29</sup> Turner responded: "Jeff, I apologize for the oversight."<sup>30</sup> But  
13 Turner continued to schedule press conferences without notifying or inviting  
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18       <sup>24</sup> *Id.*, ¶¶ 12-13.

19       <sup>25</sup> *Id.*, ¶ 14.

20       <sup>26</sup> *Id.* Prior to one gubernatorial press conference on February 13, 2019, then-Director of  
21 Communications for Governor Dunleavy, Mary Ann Pruitt, called Landfield and asked him to  
22 stop by her office. *Id.*, ¶ 13. Pruitt accused Landfield of placing an "object" under the  
23 conference table in the room where the press conference was to take place, but would not tell  
24 Landfield what the object was. *Id.* Landfield categorically denied placing any object under  
25 the table, and Pruitt advised that he could attend the press conference but could not ask any  
26 questions. *Id.* Landfield later learned that outgoing members of Governor Walker's  
administration had taped a speedo under the table as a prank to the incoming Dunleavy  
administration. *Id.* Landfield had no part or foreknowledge of this prank. *Id.*

27       <sup>27</sup> *Id.*, ¶ 15.

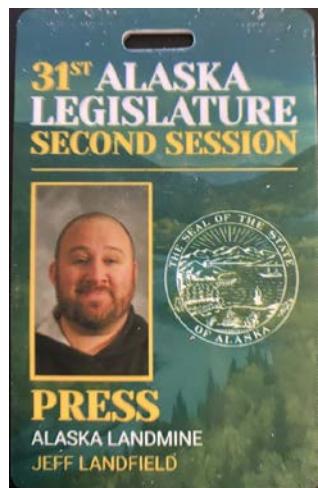
28       <sup>28</sup> *Id.*, ¶ 16.

29       <sup>29</sup> *Id.*, ¶ 17.

30       <sup>30</sup> *Id.*

1 Landfield.<sup>31</sup> However, in February 2020, Turner telephoned Mollie Barnes, a new  
2 reporter for The Alaska Landmine who had previously written for the Juneau Empire,  
3 and told her she was invited to a gubernatorial press event because she was a “real  
4 journalist.”<sup>32</sup> Barnes reported this exchange to Landfield and attended the event on  
5 behalf of The Alaska Landmine.<sup>33</sup>

7 In January 2020, Landfield returned to Juneau to cover the second session of the  
8 31st Alaska Legislature.<sup>34</sup> The Alaska Legislature credentialed Landfield as a member  
9 of the media.<sup>35</sup> Below is a true and accurate depiction of Landfield’s still-active press  
10 pass:<sup>36</sup>



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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, ¶ 18.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, ¶ 19.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

1 Defendant Turner still refused to invite Landfield to gubernatorial press events.<sup>37</sup>

2 Landfield unsuccessfully brought the matter to Defendant Ben Stevens'  
3 attention. Defendant Stevens was and still is Governor Dunleavy's Chief of Staff.<sup>38</sup> In  
4 late February/early March 2020, Landfield met with Stevens, and explained the  
5 problem.<sup>39</sup> Stevens asked Landfield what Landfield wanted him to do, and Landfield  
6 responded that Stevens should tell Turner to put him on the list for notices and invites  
7 to gubernatorial press events.<sup>40</sup> Stevens responded that he could not help because there  
8 was nothing he could do about Turner not doing his job.<sup>41</sup>

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10  
11 Shortly after this meeting, the novel coronavirus pandemic struck Alaska.<sup>42</sup> The  
12 Alaska Legislature adjourned in March 2020, and thereafter most gubernatorial press  
13 events have been held via video teleconference.<sup>43</sup> Landfield continued to attend these  
14 events, despite not receiving notice or an invitation from the governor's office, when  
15 other journalists told him about them.<sup>44</sup>

16  
17 Landfield's attempted workaround is now completely untenable. On December  
18 11, 2020, Governor Dunleavy held a video conference press conference to discuss his  
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21 <sup>37</sup> *Id.*, ¶ 20.

22 <sup>38</sup> *Id.*

23 <sup>39</sup> *Id.*

24 <sup>40</sup> *Id.*

25 <sup>41</sup> *Id.*

26 <sup>42</sup> *Id.*, ¶ 21.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, ¶ 21.

1 proposed state budget for FY 2022.<sup>45</sup> Once again, Defendant Turner did not include  
2 Landfield on the press notice and invite for this press conference.<sup>46</sup> Nevertheless,  
3 another journalist forwarded the notice and invite to Landfield, and Landfield called  
4 into the press conference.<sup>47</sup>

6 The press conference lasted just over 48 minutes, with Governor Dunleavy  
7 presenting for 18 minutes, and taking questions for roughly 30 minutes.<sup>48</sup> The event is  
8 viewable in its entirety at the Governor's website [https://gov.alaska.gov/  
9 newsroom/page/2/](https://gov.alaska.gov/newsroom/page/2/) by clicking on "FY 2022 Budget Press Briefing."<sup>49</sup> Defendant  
10 Turner was in attendance and determined which press members were permitted to ask  
11 questions.<sup>50</sup> Following Governor Dunleavy's presentation, Turner called eleven  
12 journalists from the following outlets in the following order: Alaska's News Source,  
13 Alaska Education Update, Associated Press, Anchorage Daily News, KTOO, Juneau  
14 Empire, News of the North, Fairbanks Daily News-Miner, Cordova Times, Ketchikan  
15 Daily News, and Alaska Journal of Commerce.<sup>51</sup> At the conclusion of Dunleavy's  
16 answer to the Alaska Journal of Commerce, Landfield tried to ask a question by stating  
17 "Can I ask a question?" but Turner immediately stated:  
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22<sup>45</sup> *Id.*, ¶ 22.  
23<sup>46</sup> *Id.*  
24<sup>47</sup> *Id.*  
25<sup>48</sup> *Id.*  
26<sup>49</sup> *Id.*  
<sup>50</sup> *Id.*  
<sup>51</sup> *Id.*, ¶ 22.

1 Ok, Governor. That wraps it up for the question and answer period. Uhh,  
2 just a quick reminder to the reporters and everyone out there watching  
3 this afternoon. All of the budget documents should be posted on the  
4 Office of Management and Budget website any moment now. Uhh, so,  
5 you should be able to grab those and pull 'em down. And for the reporters  
6 please keep an eye out on your inbox. You should be receiving a press  
release from the Alaska Department of Revenue on the fall revenue  
source book. And, with that, we'll go back to the Governor for closing  
comments.<sup>52</sup>

7 Landfield again sought to interject by stating “Can I ask a question?” Turner responded:  
8  
9 “I’m sorry who was that?” Landfield replied: “This is Jeff Landfield. Can I ask a  
10 question?” Turner stated: “Sorry, Jeff, we’re going to go to closing comments. Thank  
11 you.”<sup>53</sup> Governor Dunleavy finished his statements and the press conference ended.<sup>54</sup>

Defendants' refusal to treat Landfield equally to the other members of the credentialed press has had an immediate negative impact on Landfield's ability to do his job.<sup>55</sup> Defendants have never provided Landfield a reason why they treat him disparately to the other credentialed press, or why they invited him to these events in 2019, but refuse to invite him in 2020.<sup>56</sup> Landfield has never disrupted or otherwise acted improperly at these press events.<sup>57</sup> While other journalists often inform Landfield of upcoming press events, they forget sometimes. This means Landfield is unable to

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*Id.*

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56 *Id.*, ¶ 23.

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1 take videos and photographs of the press conference to use in his reporting, and unable  
2 to view the body language of the governor or other speakers.<sup>58</sup> Most importantly, it  
3 appears that Defendant Turner is now only allowing members of the press he invites  
4 and who respond that they will attend to ask questions of the governor or other  
5 speakers.<sup>59</sup>

7 On Monday, December 14, 2020, Landfield through his legal counsel sent a  
8 demand letter to Defendants and the Acting Attorney General of Alaska.<sup>60</sup> Landfield  
9 demanded that he be treated equally to other credentialed members of the press, and  
10 receive confirmation by close of business on Wednesday, December 16, that  
11 Defendants would do so. After Defendants did not provide such confirmation,  
12 Landfield drafted and filed his complaint initiating this lawsuit.  
13

### 15 **III. DISCUSSION**

16 *Winter v. Natural Resources Defense Council, Inc.*<sup>61</sup> provides the applicable  
17 standard for adjudicating requests for temporary restraining order and preliminary  
18 injunction in federal court. Under *Winter*, the moving party must establish each of the  
19 following: (1) that they are likely to succeed on the merits; (2) that they are likely to  
20 suffer irreparable harm in the absence of preliminary relief; (3) that the balance of the  
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24 <sup>58</sup> *Id.*, ¶ 24.  
25 <sup>59</sup> *Id.*  
26 <sup>60</sup> *See Declaration of Lee Baxter, ¶ 2 (Dec. 23, 2020).*  
61 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008).

equities tip in their favor; and (4) that an injunction is in the public interest.<sup>62</sup> The Ninth Circuit recognizes that a court is permitted to issue a preliminary injunction when the moving party has effectively raised “serious questions on the merits,” as opposed to the more arduous burden of establishing a likelihood of success on the merits, so long as the balance of the hardships tips sharply in their favor and they satisfy the other two *Winter* prongs.<sup>63</sup> The moving party must “make a showing on all four prongs” of *Winter* to obtain a preliminary injunction.”<sup>64</sup>

The moving party has the burden of persuasion.<sup>65</sup> The Ninth Circuit reviews a district court's grant or denial of a preliminary injunction for "abuse of discretion."<sup>66</sup>

As demonstrated below, Plaintiffs Landfield and The Alaska Landmine are entitled to a temporary restraining order and preliminary injunction under the *Winter* standard, and it would be an abuse of discretion for this Court to deny this motion.

**A. Plaintiffs' Free Speech and Due Process Claims are Likely to Succeed. Alternatively, Plaintiffs have Raised Serious Questions Going to the Merits of this Case**

A moving party who shows likelihood of success on the merits has necessarily shown that there are serious and substantial questions going to the merits of the case.

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62 *Id.*

<sup>63</sup> See *Disability Law Center of Alaska v. Meyer*, \_\_\_ F. Supp. 3d \_\_\_, \_\_\_, 2020 WL 5351595, \*2 (D. Alaska Sept. 3, 2020) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)).

<sup>64</sup> *Disability Law Center of Alaska*, 2020 WL 5351595, at \*2 (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1135).

<sup>65</sup> *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012).

<sup>66</sup> *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1141 (9th Cir. 2018) (“We review a district court’s decision to grant or deny a preliminary injunction for abuse of discretion.”)

1 Therefore, Plaintiffs' showing below that they are almost assuredly going to prevail on  
2 their free speech and due process claims necessarily meets the lower standard  
3 recognized by the Ninth Circuit of serious questions going to the merits.  
4

5 **1. Plaintiffs are likely to succeed in demonstrating that  
6 Defendants' revocation of Landfield's press credentials violated  
7 the Free Speech Provisions of the U.S. Constitution and Article  
8 I, Section 5 of the Alaska Constitution.**

9 As shown above, Landfield is a credentialed member of the press. Governor  
10 Dunleavy's office treated him as such throughout most of 2019, by providing him the  
11 same notifications and invitations to gubernatorial press events as other credentialed  
12 members received. Governor Dunleavy's office did an about face in October 2019,  
13 when Press Secretary Shuckerow resigned and Defendant Turner took over interfacing  
14 with the Alaska media. Defendants' arbitrary treatment of Landfield and The Alaska  
15 Landmine violates the free speech principles of the United States and Alaska  
16 constitutions.  
17

18 The D.C. Circuit has dealt with the federal executive branch's refusal to provide  
19 credentialed reporters equal access to presidential press events. The D.C. Circuit has  
20 long held that "arbitrary or content-based criteria for press pass issuance are prohibited  
21 under the first amendment[.]"<sup>67</sup> In *Sherrill v. Knight*, President Nixon's administration  
22 denied Robert Sherrill, a journalist for The Nation magazine, press credentials to attend  
23

24  
25 \_\_\_\_\_  
26 (quoting *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1115 (9th Cir. 2011)).

67 *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977).

1 presidential press events at the White House, even though he had been credentialed in  
2 previous years for such access.<sup>68</sup> The Nixon administration refused to tell the journalist  
3 why it was denying him press credentials.<sup>69</sup> Sherrill sued, and the D.C. Circuit held  
4 that the White House's refusal to issue press credentials implicated core free speech  
5 principles:

7 We are presented with a situation where the White House has voluntarily  
8 decided to establish press facilities for correspondents who need to report  
9 therefrom. These press facilities are perceived as being open to all bona  
10 fide Washington-based journalists, whereas most of the White House  
11 itself, and press facilities in particular, have not been made available to  
12 the general public. White House press facilities having been made  
13 publicly available as a source of information for newsmen, the protection  
14 afforded newsgathering under the first amendment guarantee of free of  
15 the press[.]<sup>70</sup>

16 The court noted that U.S. Supreme Court precedent required "that this access not be  
17 denied arbitrarily or for **less than compelling reasons.**"<sup>71</sup> The connection between the  
18 government's attempted control of who had access to cover President Nixon and his  
19 administration and free speech was obvious:

20 Not only newsmen and the publications for which they write, but also the  
21 public at large have an interest protected by the first amendment in  
22 assuring that restrictions on newsgathering be no more arduous than  
23 necessary, and that individual newsmen not be arbitrarily excluded from  
24 sources of information.<sup>72</sup>

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25 <sup>68</sup> *Id.* at 126.

26 <sup>69</sup> *Id.* at 126-27.

27 <sup>70</sup> *Id.* at 129 (citing *Branzburg v. Hayes*, 408 U.S. 665, 681, 707 (1972); *Pell v. Procunier*,  
28 417 U.S. 817, 829-35 (1974)).

29 <sup>71</sup> *Sherrill*, 569 F.2d at 129 (emphasis added) (citing *Southeastern Promotions v. Conrad*,  
30 420 U.S. 546 (1975); *Lovell v. Griffin*, 303 U.S. 444 (1938)).

31 <sup>72</sup> *Sherrill*, 569 F.2d at 129-30 (citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469,

1  
2 Therefore, the court held the Nixon administration’s refusal to provide Sherrill the same  
3 access to the White House press facilities and to administration press events implicated  
4 “important first amendment rights[,]” and “such refusal must be based on a compelling  
5 government interest.”<sup>73</sup> The *Sherrill* court further held that the White House was  
6 required to publish or otherwise make publicly known “the actual standard employed  
7 in determining whether an otherwise eligible journalist will obtain a White House press  
8 pass.”<sup>74</sup>

9  
10 The Alaska Constitution’s protection of the free speech principles related to  
11 newsgathering addressed above is coextensive but is protective in a more “explicit and  
12 direct manner.”<sup>75</sup> Article I, Section 5 provides: “Every person may freely speak, write,  
13 and publish on all subjects, being responsible for the abuse of that right.” Like the  
14 federal standard, under Alaska’s Constitution content-based restrictions are subject to  
15 strict scrutiny:

16  
17 Once a fundamental right under the constitution of Alaska has been  
18 shown to be involved and it has been further shown that this  
19 constitutionally protected right has been impaired by governmental  
20 action, then the government must come forward and meet its substantial  
21 burden of establishing that the abridgment in question was justified by a

22  
23  
24 491-92 (1975); *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting);  
*United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943) (“right conclusions  
are more likely to be gathered out of a multitude of tongues, than through any kind of  
authoritative selection.”)).

25  
26 <sup>73</sup> *Sherrill*, 569 F.2d at 130.

<sup>74</sup> *Id.* at 130.

<sup>75</sup> *Messerli v. State*, 626 P.2d 81, 83 (Alaska 1980).

**compelling governmental interest.**<sup>76</sup>

Defendants have no such compelling reason to abridge Plaintiffs' newsgathering efforts by excluding Landfield from notices about and invitations to gubernatorial press events.

Here, Defendants, like the Nixon White House, have not articulated any executive branch standard by which they recognize journalists as eligible to receive notice of and invitation to gubernatorial press events. The Alaska Legislature has credentialed Landfield as such, yet Defendants refuse to treat Landfield in the same manner as the other credentialed journalists. Defendants provide the other credentialed journalists prior notice and invitation to gubernatorial press events. As the December 11, 2020 gubernatorial press conference highlights, Defendants also provide the other credentialed journalists an opportunity to respond to these invitations and thereby reserve a chance to ask the presenter questions. Defendants are not providing Landfield these same notices, invitations or a chance to ask questions of presenters at gubernatorial press events. This violates Landfield's and The Alaska Landmine's free speech rights recognized by *Sherrill*.

It goes without saying that the government has no legitimate interest in refusing reporters access to gubernatorial press events based on the content or viewpoint of their reporting.<sup>77</sup> As the First Circuit has explained: “The danger in granting favorable

<sup>76</sup> *Club SinRock, LLC v. Municipality of Anchorage*, 445 P.3d 1031, 1037-38 (Alaska 2019) (quoting *Messerli v. State*, 626 P.2d 81, 84 (Alaska 1980)).

<sup>77</sup> See *Cable News Network, Inc. v. American Broadcasting Companies, Inc.*, 518 F. Supp. 1238, 1245 (N.D. Ga. 1981); *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986).

1 treatment to certain members of the media is obvious: it allows the government to  
2 influence the type of substantive media coverage that public events will receive. Such  
3 a practice is unquestionably at odds with the first amendment.”<sup>78</sup> The First Amendment  
4 “prohibits government officials from subjecting an individual to retaliatory actions . . .  
5 for speaking out,”<sup>79</sup> and discrimination “based upon the content of the journalist’s  
6 publications.”<sup>80</sup> The U.S. Supreme Court holds that content-based and viewpoint-based  
7 restrictions “are presumptively unconstitutional and may be justified only if the  
8 government proves that they are narrowly tailored to serve compelling state interests.”<sup>81</sup>

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12 <sup>78</sup> *Cryovac*, 805 F.2d at 9.

13 <sup>79</sup> *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

14 <sup>80</sup> *Stevens v. N.Y. Racing Ass’n, Inc.*, 665 F. Supp. 164, 175 (E.D.N.Y. 1987). Even when  
15 a restriction is not content-based on its face, it is impermissible where circumstantial evidence  
16 demonstrates it was motivated by content or viewpoint. *Id.* (finding it likely that a restriction  
17 was content-based where the imposer stated off the record that it was based on specific  
18 journalists’ coverage detracting from attention to the imposer’s event). When a government  
19 official’s “criticism [of the press] transforms into an attempt to use the powers of governmental  
20 office to intimidate or to discipline the press or one of its members because of what appears in  
21 print, a compelling governmental interest that cannot be served by less restrictive means must  
22 be shown for such use to meet Constitutional standards.” *Borreca v. Fasi*, 369 F. Supp. 906,  
23 910 (D. Haw. 1974).

24 <sup>81</sup> *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218, 2226 (2015); *Citizens United v. Fed.*  
25 *Election Com’n*, 558 U.S. 310, 340 (2010) (“Premised on mistrust of governmental power, the  
26 First Amendment stands against attempts to disfavor certain subjects or viewpoints.”);  
*Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“Viewpoint  
discrimination is . . . an egregious form of content discrimination.”); *Simon & Schuster, Inc. v.*  
*Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (“[T]he government’s  
ability to impose content-based burdens on speech raises the specter that the government may  
effectively drive certain ideas or viewpoints from the marketplace.”); *Regan v. Time, Inc.*, 468  
U.S. 641, 648-49 (1984) (“Regulations which permit the Government to discriminate on the  
basis of the content of the message cannot be tolerated under the First Amendment.”); *Consol.*  
*Edison Co. of New York v. Pub. Serv. Com’n of New York*, 447 U.S. 530, 537-38 (1980) (“[T]he  
First Amendment means that government has no power to restrict expression because of its  
message, its ideas, its subject matter, or its content. . . To allow a government [to discriminate  
based on viewpoint] would be to allow that government control over the search for political  
truth.”); *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) (“Any [content-  
based restriction on speech] would completely undercut the profound national commitment to

1       Here, there can be no serious question that Defendants' *de facto* revocation of  
2 Landfield's press credentials for gubernatorial press events is a content- and viewpoint-  
3 based punishment imposed on Landfield because Defendants do not like his or The  
4 Alaska Landmine's reporting. Governor Dunleavy's administration treated Landfield  
5 as a member of the credentialed press from January 2019 through September 2019, until  
6 Press Secretary Shuckerow resigned. When Defendant Turner took over in October  
7 2019, Landfield no longer received notice of or invitation to gubernatorial press events.  
8  
9 Defendant Turner has refused to explain the governor's office's reversal regarding  
10 Landfield's press credentials. Meanwhile, Landfield has broken news highly critical of  
11 the Dunleavy administration.<sup>82</sup> The Dunleavy administration appears to disfavor and  
12 dismiss the content of Landfield's reporting for The Alaska Landmine as not "real"  
13 journalism. This is nonsensical, content-based discrimination.  
14  
15

16       The Alaska Landmine's readership is substantial and its content covers topics of  
17 public importance. The Alaska Landmine's website [www.alaskalandmine.com](http://www.alaskalandmine.com)  
18 receives tens of thousands of views each week.<sup>83</sup> Landfield has broken significant  
19 news. For instance, in March 2020, Landfield published an article that resulted in U.S.  
20 Senators Lisa Murkowski and Dan Sullivan introducing a private bill to Congress to  
21 provide permanent legal immigration status to an Alaskan woman who, unbeknownst  
22

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23  
24 the principle that debate on public issues should be uninhibited, robust, and [wide]-open.")  
25 (internal quotation marks omitted).

26  
27       <sup>82</sup> See Aff. of J. Landfield, ¶ 7.

28       <sup>83</sup> *Id.*, ¶ 8.

1 to her, was brought to the United States when she was only days old and was facing  
2 mandatory deportation in 33 days.<sup>84</sup> In September 2019, Landfield and Paxson  
3 Woelber published a piece on Campbell Lake that resulted in the State and Municipality  
4 of Anchorage confirming that, contrary to the private landowners who own lots  
5 surrounding Campbell Lake in Anchorage, the lake was public lands open to public use  
6 and accessible via two public easements that crossed private property.<sup>85</sup> Landfield has  
7 also broken news that is highly critical of the Dunleavy administration, and resulted in  
8 the grandson of a donor that helped secure Governor Dunleavy's election as governor  
9 opting out of a controversial and lucrative contract.<sup>86</sup>

12 The Alaska Landmine "Radio" section contains over 180 long-form interviews  
13 in the form of podcasts with the who's who of Alaska's political, business, and cultural  
14 communities. For Alaska Landmine Radio, Landfield has interviewed, among many  
15 others, Governor Dunleavy,<sup>87</sup> Governor William Walker, U.S. Representative Don  
16 Young, U.S. Senators Murkowski and Sullivan, Alaska Chief Medical Officer Anne  
17 Zink, Health and Human Services Commissioner Adam Crum, several members of the  
18

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22 <sup>84</sup> *Id.*, ¶ 6; see also Jeff Landfield, *Government Orders Deportation of Bethel Military*  
23 *Wife and Mother*, THE ALASKA LANDMINE (Mar. 3, 2020) (available at:  
<https://alaskalandmine.com/landmines/government-orders-deportation-of-bethel-military-wife-and-mother/>).

24 <sup>85</sup> Aff. of J. Landfield, ¶ 5.

25 <sup>86</sup> *Id.*, ¶ 7.

26 <sup>87</sup> See Mike Dunleavy – Episode 66 (available at: <https://podcasts.apple.com/us/podcast/mike-dunleavy-episode-66/id1441738651?i=1000436678070>).

1 Anchorage Assembly, and several members of the Alaska Legislature.<sup>88</sup>

2       The Alaska Landmine publishes on a regular basis. It publishes two weekly  
3 columns, and Landfield aims to publish one stand-alone column per day, although that  
4 is not always possible or feasible.<sup>89</sup> The Alaska Landmine also includes a “Community  
5 Voices” section where guest writer pieces are published, as well as an online video  
6 series called “The Review,” which takes deep looks at news, politics, and current  
7 events.<sup>90</sup>

8       Landfield is a bona fide journalist and The Alaska Landmine is a bona fide media  
9 outlet. Any attempt by Defendants to explain their disparate treatment of Landfield by  
10 diminishing his or The Alaska Landmine’s reporting is content and viewpoint  
11 discrimination.

12       Plaintiffs are likely to succeed on their free speech claims because, as  
13 demonstrated above, Defendants’ refusal to include Landfield on notices about and  
14 invitations to gubernatorial press events implicates Plaintiffs’ free speech rights to  
15 gather and report news to The Alaska Landmine’s readership. Defendants’ actions have  
16 rendered Plaintiffs unable to attend gubernatorial press events, and unable to ask  
17 presenters questions at these events. Defendants have no compelling governmental  
18 reason to abridge Plaintiffs’ free speech rights in this manner. Indeed, they have refused  
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25       <sup>88</sup> Aff. of J. Landfield, ¶ 8.

26       <sup>89</sup> *Id.*, ¶ 9.

27       <sup>90</sup> *Id.*, ¶ 9.

1 to provide Landfield any reason whatsoever for this disparate treatment. Defendants  
2 will be unable to successfully defend their actions against the rights enshrined by the  
3 First Amendment of the U.S. Constitution and Article I, Section 5 of the Alaska  
4 Constitution.

6 It bears noting what Plaintiffs do not seek in this lawsuit. Plaintiffs do not seek  
7 a ruling that the office of the governor is precluded from limiting who is invited to  
8 gubernatorial press events if the venue presents space or seating limitations. The  
9 governor's office has the right to use neutral criteria when space is limited.<sup>91</sup> Space  
10 and seating is not at issue here, as the state facilities where these events occur were built  
11 during a time when the local press was much more robust than it is now, and as a result,  
12 Defendants' gubernatorial press events always have more space for the press than is  
13 needed.<sup>92</sup> Likewise, Plaintiffs are not seeking a ruling that anyone with a social media  
14 presence is entitled to notice of and ability to attend gubernatorial press events. *Sherrill*  
15 allows Defendants to limit press access to "bona fide journalists" with appropriate  
16 professional credentials.<sup>93</sup> As demonstrated above, Landfield is a bona fide journalist  
17 who regularly publishes, travels to Juneau to cover the session, and has conducted one-  
18 on-one interviews with the highest government officials in Alaska, including Governor  
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24 <sup>91</sup> See *Frank v. Herter*, 269 F.2d 245, 248-49 (D.C. Cir. 1959) (Burger, J., concurring)  
25 (Secretary of State may use neutral criterial to allocate press seats on his plane for a foreign  
26 trip).

<sup>92</sup> Aff. of J. Landfield, ¶ 3.

<sup>93</sup> *Sherrill v. Knight*, 569 F.2d 124, 129 & n.9 (D.C. Cir. 1977).

1 Dunleavy. A ruling in Plaintiffs' favor does not open the floodgates for anyone with a  
2 Twitter handle to demand a seat at the Governor's press conferences.  
3

4 **2. Plaintiffs are likely to succeed in demonstrating that Defendants  
5 violated the due process clauses of the U.S. and Alaska  
Constitutions.**

6 Defendants have unconstitutionally revoked Landfield's press credentials for  
7 gubernatorial press events after granting Landfield credentials through most of 2019.  
8 Defendants rely on the Alaska Legislature to credential bona fide journalists, and have  
9 no separate policy for determining who is a real journalist and who is not. As a  
10 credentialed member of the press, Landfield is entitled to receive the same notice of  
11 and invitation to gubernatorial press events the other credentialed press receive, and  
12 that Landfield received for most of 2019. Landfield's press credentials to receive the  
13 same notice and invitation are liberty interests protected by the due process clauses of  
14 the U.S. and Alaska Constitutions. Defendants' revocation of those credentials in 2020  
15 violated Landfield's due process rights.  
16

17 *Sherrill* is again the leading case for analyzing when the executive branch's  
18 refusal to issue press credentials constitutes a deprivation of the journalist's due process  
19 rights.<sup>94</sup> In that case, the D.C. Circuit reasoned that its earlier conclusion that a bona  
20 fide journalist had free speech rights to a White House press pass meant that the  
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26 <sup>94</sup> *Sherrill* applied the due process analysis from the seminal due-process case *Morrissey  
v. Brewer*, 408 U.S. 471, 481 (1972). *Sherrill*, 569 F.2d at 131.

journalist was also entitled to due process in the revocation of those credentials.<sup>95</sup> Specifically, the court held a previously credentialed journalist was entitled to the following due process: (1) notices of any factual bases for denial of the press pass, (2) an opportunity for the applicant to respond to those bases, and (3) a final written statement of the reasons for denial.<sup>96</sup> The court went on to conclude that the Nixon administration violated Robert Sherrill's due process rights because the administration had not told him the factual basis for denying renewal of his press credentials, had not provided him an opportunity to rebut, and had not provided Sherrill with a final written determination.<sup>97</sup>

Article I, Section 7 of the Alaska Constitution provides, in relevant part: “No person shall be deprived of life, liberty, or property, without due process of law.” The Alaska Supreme Court has explained that the “term ‘due process of law’ is not susceptible of precise definition or reduction to a mathematical formula. But in the course of judicial decisions it has come to express a basic concept of justice under law[.]”<sup>98</sup> In *Wickersham v. State Commercial Fisheries Entry Commission*,<sup>99</sup> the

95

*Id.* at 130.

<sup>96</sup> *Id.* (“In our view, the procedural requirements of notice of the factual bases for denial, an opportunity for the applicant to respond to these, and a final written statement of the reasons for denial are compelled by the foregoing determination that the interest of a bona fide Washington correspondent in obtaining a White House press pass is protected by the first amendment.”).

97 *Id.* at 131.

<sup>98</sup> *Bachner v. Pearson*, 479 P.2d 319, 333-34 (Alaska 1970).

<sup>99</sup> *Wickersham v. State Commercial Fisheries Com'n*, 680 P.2d 1135, 1144-45 (Alaska 1984).

1 Alaska Supreme Court cited with favor the U.S. Supreme Court's precedent on due  
2 process, and held that a state fishery commission's denial of untimely fisherman  
3 applications to enter the Cook Inlet and Prince William Sound drift gillnet fisheries  
4 violated due process because the commission had not provided individual notice of how  
5 the application process worked, and denied their appeals.<sup>100</sup>

7 Here, there is no question that Defendants violated Landfield's due process  
8 rights. The governor's office credentialed Landfield as a member of the press through  
9 most of 2019, and regularly notified him of and invited him to gubernatorial press  
10 events. In late 2019, Defendants reversed course and effectively revoked Landfield's  
11 press credentials without explanation. Defendants did not provide Landfield the due  
12 process required by *Sherrill*. They did not provide Landfield with notice of the factual  
13 bases for denying him a press pass, did not provide him an opportunity to respond to  
14 these factual bases, and did not provide him a final written statement of the reasons for  
15 denial. Indeed, Defendants have provided Landfield no notice of any reason why they  
16 revoked his credentials, have provided him nothing in writing as to why he was denied,  
17 have provided him no means of rebutting their decision, and have falsely claimed that  
18 omitting him from press conference invitations was merely an "oversight." There is no  
19 doubt that Defendants have violated Landfield's due process rights under the Fifth  
20 Amendment to the U.S. Constitution and Article I, Section 7 of the Alaska Constitution.  
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26 <sup>100</sup> *Id.* at 1144-45.

1           **B. Plaintiffs Will Be Irreparably Injured Absent Immediate Injunctive**  
2           **Relief**

3           Under this prong, this Court must presume that Plaintiffs succeed on the merits  
4           of their free speech and due process challenges to Defendants' revocation of  
5           Landfield's press credentials for gubernatorial events.<sup>101</sup> Quoting BLACK'S LAW  
6           DICTIONARY, the Alaska Supreme Court has explained that an "irreparable injury" is  
7

8           an injury, whether great or small, which ought not to be submitted to, on  
9           the one hand, or inflicted on the other; and which, because it is so large  
10          or so small, or is of such constant and frequent occurrence, or because no  
11          certain pecuniary standard exists for the measurement of damages, cannot  
12          receive reasonable redress in a court of law.<sup>102</sup>

13          Defendants' infringement of Landfield's and The Alaska Landmine's free speech and  
14          due process rights are precisely the type of damages that constitute "irreparable  
15          injuries" under the Alaska Supreme Court's formulation. There is no certain pecuniary  
16          standard to measure the damages to Landfield and The Alaska Landmine caused by  
17          Defendants 'revocation of Landfield's press credentials to be notified of and invited to  
18          gubernatorial press events.

19          Federal courts agree. A long and unbroken line of cases have established that  
20          "[t]he loss of First Amendment freedoms, . . . unquestionably constitutes irreparable

22          

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<sup>101</sup> *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (citing *A.J. Indus., Inc. v. Alaska*  
23          *Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970)) ("Our rationale in adopting the balance  
24          of hardships rule in *A.J. Industries* demonstrates that a court is to assume the plaintiff  
25          ultimately will prevail when assessing the irreparable harm to the plaintiff absent an injunction,  
26          and to assume the defendant ultimately will prevail when assessing the harm to the defendant  
                from the injunction[.]").

<sup>102</sup> *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 n.5 (Alaska  
                1992).

1 injury.”<sup>103</sup> That includes free speech violations “for even minimal periods of time.”<sup>104</sup>  
2 Indeed, the mere fact that free speech violations may have a chilling effect on speech is  
3 enough to satisfy the irreparable injury standard.<sup>105</sup> Defendants, by revoking  
4 Landfield’s press pass, have certainly put other reporters on notice that unfavorable  
5 coverage may lead to the reporter losing his or her ability to attend gubernatorial press  
6 briefings, a must for any capital journalist.  
7

8 Courts have held that restrictions on a reporter’s coverage of White House and  
9 government affairs, like those placed on Landfield here, constitute irreparable injury to  
10 the reporters themselves, to the outlets they work for, and to the public at large. In  
11 *Cable News Network, Inc. v. American Broadcasting Companies, Inc.*,<sup>106</sup> for example,  
12 several television crews were excluded from White House pool coverage.<sup>107</sup> The court  
13 granted a preliminary injunction, noting that, absent such relief, the plaintiffs would  
14 “suffer irreparable injury.”<sup>108</sup> The court reasoned that by excluding these news outlets,  
15 “a complete visual record of the Presidential activities covered by the press pools is lost  
16

19  
20 <sup>103</sup> *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Pursuing America’s*  
21 *Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (same); *Mills v. District of Columbia*,  
22 571 F.3d 1304, 1312 (D.C. Cir. 2009) (same); *Westinghouse Broad. Co., Inc. v. Dukakis*, 409  
23 F. Supp. 895, 896 (D. Mass. 1976).

24 <sup>104</sup> *Pursuing America’s Greatness*, 831 F.3d at 511.

25 <sup>105</sup> *DeGuiseppi v. Vill. of Bellwood*, 68 F.3d 187, 192 (7th Cir. 1995) (“[R]etaliation need  
26 not be monstrous to be actionable under the First Amendment; it need merely create the  
potential for chilling . . . speech on matters of public concern.”).

<sup>106</sup> *Cable News Network, Inc. v. American Broadcasting Companies, Inc.*, 518 F. Supp.  
1238 (N.D. Ga. 1981).

<sup>107</sup> *Id.* at 1245-46.

<sup>108</sup> *Id.* at 1245.

1 forever”—a loss that “clearly constitutes irreparable injury to [the news outlets], as well  
2 as the public.”<sup>109</sup>

3  
4 The court reached a similar result in *Cable News Network, Inc. & Acosta v. Trump*,<sup>110</sup> a case involving the Trump administration’s revocation of CNN  
5 correspondent Jim Acosta’s White House credentials following a testy exchange  
6 between Acosta and President Trump regarding a caravan approaching the southern  
7 border of the United States.<sup>111</sup> Judge Kelly of the United States District Court for the  
8 District of Columbia applied *Sherrill* and easily concluded that the administration’s  
9 revocation of Acosta’s press pass constituted irreparable injury to Acosta, regardless of  
10 CNN’s ability to immediately replace Acosta with another White House correspondent:

11  
12 [T]he First Amendment interests, as recognized in *Sherrill*, were not  
13 vested merely in publications or agencies. They were liberties of the  
14 individual journalists themselves. For that reason, that CNN may still  
15 send another journalist or other journalist to the White House does not  
16 make the harm to Mr. Acosta any less irreparable. Each day that he is  
17 deprived of that interest without the process prescribed by the court in  
18 *Sherrill*, he suffers a harm that cannot be remedied in retrospect. The  
19 Court cannot restore his access to press briefings that have already  
already been had.

20 And so on this highly, highly unusual set of facts and interests at stake, I

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21  
22 <sup>109</sup> *Id.* at 1246.

23  
24 <sup>110</sup> *Cable News Network, Inc. & Acosta v. Trump*, 1:18-cv-02610-TJK (D.D.C. 2018).  
This case is not reported on Westlaw and is only viewable through the federal PACER  
docketing system. Plaintiffs attach to this brief the transcript in which Judge Timothy Kelly  
issued his oral decision as **Exhibit W**. The relevant discussion is on pages 11-13 of the  
attached transcript.

25  
26 <sup>111</sup> See Richard Gonzales, *White House Revokes Press Pass of CNN’s Jim Acosta* (Nov. 7,  
2018) (available at: <https://www.npr.org/2018/11/07/665497382/white-house-revokes-press-pass-of-cnn-s-jim-acosta>).

1 do find that the plaintiffs have met their burden of establishing that  
2 irreparable harm has and will continue to occur in the absence of  
preliminary relief.<sup>112</sup>

3 The Court granted the temporary restraining order requiring the Trump administration  
4 to restore Acosta's press credentials.<sup>113</sup>

5 The U.S. Supreme Court and Ninth Circuit have repeatedly held that loss of free  
6 speech freedoms even for minimal periods of time "unquestionably constitutes  
7 irreparable injury."<sup>114</sup> The harm is particularly irreparable where, as here, Plaintiffs  
8 seeks to engage in political speech, as "timing is of the essence in politics" and "[a]  
9 delay of even a day or two may be intolerable...."<sup>115</sup> Plaintiffs have therefore  
10 demonstrated a likelihood of irreparable injury in the absence of an injunction.

11

12 **C. The Balance of the Equities Tip Sharply In Favor of Granting**  
**Plaintiffs Immediately Injunctive Relief**

13

14 This prong requires this Court to balance the competing interests of Defendants  
15 to withhold notice of and not invite Plaintiffs to gubernatorial press events against  
16 Plaintiffs' rights to free speech and due process under the federal and state constitutions.  
17 This balancing test is meant to ensure weak claims for preliminary injunction do not  
18 override the opposing party's interests. As this Court recently recognized, "a  
19

20

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21 <sup>112</sup> **Exhibit W**, Transcript of *CNN v. Trump* Oral Ruling, at 13.

22

23 <sup>113</sup> *Id.* at 14.

24 <sup>114</sup> *Elrod v. Burns*, 427 U.S. 347, 373; *Klein v. City of San Clemente*, 548 F.3d 1196, 1207-  
08 (9th Cir. 2009) (collecting cases).

25 <sup>115</sup> *Klein*, 548 F.3d at 1208 (quoting *Long Beach Area Peace Network v. City of Long*  
26 *Beach*, 522 F.3d 1010, 1020 (9th Cir. 2008) and *NAACP v. City of Richmond*, 743 F.2d 1346,  
1356 (9th Cir. 1984)).

1 ‘preliminary injunction is an extraordinary remedy never awarded as of right . . .’ and  
2 this Court ‘must balance the competing claims of injury and consider the effect of  
3 granting or withholding the requested relief, paying particular regard to the public  
4 consequences.’”<sup>116</sup>

5  
6 Here, the balance of equities is not even close. Given the substantial free speech  
7 and due process violations at issue here and the *immediate* negative impact on Plaintiffs,  
8 the equities sharply tip in Plaintiffs’ favor and counsels entry of immediate injunctive  
9 relief. “Ordinarily, such a threatened injury to the plaintiff will easily outweigh  
10 whatever burden the injunction may impose, because the government is in no way  
11 harmed by issuance of an injunction that prevents the state from enforcing  
12 unconstitutional restrictions.”<sup>117</sup> In such situations, any harm to defendant is  
13 insignificant. Indeed, even in *Cable News Network*—which involved the wholesale  
14 exclusion of several television outlets from White House pool coverage—the court held  
15 that the restoration of access to these outlets “would merely involve some minor  
16 inconvenience to the White House press staff,” a harm that would pale in comparison  
17 to the substantial harm to Plaintiffs’ First Amendment rights and the public  
18 interest in diversity of news coverage.

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<sup>116</sup> *Disability Law Center of Alaska v. Meyer*, \_\_\_ F. Supp. 3d \_\_\_, \_\_\_, 2020 WL 5351595, \*4 (D. Alaska Sept. 3, 2020) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)).

<sup>117</sup> *Hassay v. Mayor*, 955 F. Supp. 2d 505, 517 (D. Md. 2013) (citation and quotation marks omitted); *Telemundo v. City of Los Angeles*, 283 F. Supp. 2d 1095, 1103-04 (C.D. Cal. 2003) (where news outlet had initially been compelled to delay one of its broadcasts in light of defendants’ production, holding that “equitable considerations [did] not weigh in favor of denying the preliminary injunction” on the ground that defendants’ “commercial interest in the production . . . [did] not outweigh [the news outlet’s] First Amendment rights and the public interest in diversity of coverage of newsworthy events”).

1 to the irreparable harm plaintiffs and the public would endure absent such relief.<sup>118</sup>

2 Defendants are adequately protected from a wrongfully issued injunction and  
3 the balance of the equities tips sharply in favor of granting Plaintiffs' requested  
4 injunctive relief.  
5

6 **D. The Public Interest Favors Issuance of Immediate Injunctive Relief**

7 The public interest also militates in Plaintiffs' favor and issuance of immediate  
8 injunctive relief. Courts have consistently held that the public's unfettered access to  
9 news coverage is an interest warranting injunctive relief.<sup>119</sup> Consistent with these cases,  
10 here, “[t]he pending analysis should clearly indicate that the public interest will be  
11 significantly benefitted, and in no way harmed, by the granting of the injunctive relief  
12 sought. [Landfield's] participation in [coverage of gubernatorial press events] benefits  
13 the public by informing it of the activities of its government.<sup>120</sup>

14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that this Court issue a  
16 temporary restraining order and preliminarily enjoin Defendants, requiring them to  
17 restore Landfield's press credentials to receive notice of and invitation to gubernatorial  
18 press events.  
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24 <sup>118</sup> *Cable News Network, Inc. v. American Broadcasting Companies, Inc.*, 518 F. Supp.  
1238, 1246 (N.D. Ga. 1981).

25 <sup>119</sup> See e.g. *Sherrill v. Knight*, 569 F.2d 124, 129-30 (D.C. Cir. 1977); *Telemundo*, 283 F.  
Supp. 2d at 1103-04.

26 <sup>120</sup> *Cable News Network, Inc.*, 518 F. Supp. at 1246.

DATED at Anchorage, Alaska, this 23rd day of December, 2020.

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## CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2020, a true and correct copy of the foregoing document was served via the Court's CM/ECF electronic service on the following counsel of record:

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MEMORANDUM IN SUPPORT OF MOTION FOR TRO/PI  
*THE ALASKA LANDMINE LLC, ET AL. V. MICHAEL J. DUNLEAVEY, ET AL.*  
CASE NO. 3:20-cv-00311-JMK – PAGE 35 OF 35

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